

In the Matter of the Alternative Workweek Program, Department of Law and Public Safety

CSC Docket Nos. 2011-4040 and 2011-4115

(Civil Service Commission, decided April 6, 2011)

Various employees of the Department of Law and Public Safety (LPS), represented by Gaye Palmer, Staff Representative, Communications Workers of America (CWA) Local 1033, or Vikki Thurston, Executive Vice President, CWA Local 1037, appeal the termination of the Alternative Workweek Program (AWP).¹

By way of background, by letter dated February 24, 2011, LPS requested approval to terminate its AWP. It explained that “[a]fter careful deliberation . . . it was no longer viable . . . to participate” in the program in light of “the current budgetary situation and the resulting impact on hiring.” Further, LPS indicated that it could not meet its operational needs if the AWP is maintained. It stated that the continuation of the AWP “would negatively impact [its] ability to serve the public in a timely and efficient manner.” Moreover, it advised that it would review individual situations on a case-by-case basis to determine what other remedy can be given, such as approval of other leave time or participation in a flexitime program. In addition, LPS advised that it had informed all bargaining units of its termination request. LPS contacted CWA Local 1033 by telephone on February 18, 2011, which was confirmed by letter dated February 24, 2011, regarding its request to terminate the AWP and the reason for the request. Similarly, CWA Local 1037 was notified on February 24, 2011. Additionally, employees were notified by e-mail on February 25, 2011 of the anticipated termination of the AWP due to the need to maximize LPS’ employee resources and the original effective date of April 22, 2011. By letter dated March 10, 2011, the Assistant Director, Classification and Compensation, informed LPS that its request was reviewed and it was “consistent with the provisions of *N.J.A.C. 4A:6-2.7*.” Accordingly, LPS’ request to terminate its AWP was granted. It is noted that 631 employees participate in the AWP from various divisions of LPS.

On appeal, numerous employees submit objections to the termination of the AWP and contend that LPS did not consider employee needs. They emphasize that the program was implemented to improve employee morale and to assist employees in personal matters such as child care, elder care, educational pursuits, and volunteer work. The AWP was also designed to

¹ The effective date was originally set to April 22, 2011. However, in order to allow employees additional time to adjust their schedules, LPS requests that the effective date of termination be May 6, 2011.

decrease air pollution by reducing commuting traffic. The employees explain the adverse impact it would have on their lives if the AWP was terminated, including affecting their obligations with child and elder care and the financial burdens associated with increased child care expenses and commuting costs as gas prices rise. Moreover, the employees contend that the AWP has been successfully in place for many years and the public has not been neglected. They assert that if the AWP has “flaws,” than the deficiencies should be addressed and the program should be managed more effectively, rather than terminating the AWP. Many employees submit that they use their AWP day off “wisely” for various appointments and family commitments and do not abuse the program. Further, they indicate that the job freeze has taken its toll with increased workloads and the AWP day off offers relief from the stress. They believe that participating in the AWP increases the productivity of workers. Production of certain work is increased in a longer work day. For example, an employee from the North Regional Laboratory of the State Police explains that workers must calibrate instruments and run standards every day. A longer work day allows more samples per calibration and per standard run, and thus, more cases are completed in a longer work day.

Additionally, the employees submit that it does not cost anything to continue the AWP as the number of hours worked in a given pay period is the same. They question “[w]hy does it matter that some complete their number of hours of work in nine days while some complete in ten days.” They note that if an eight-hour day off falls on a holiday, which is designated as a seven-hour day, the hour is made up during the pay period or one hour of leave time is used. Thus, the employees contend that the AWP should not be portrayed as an “entitlement.” The employees also indicate that working later hours is beneficial to prosecutors and the courts throughout the State whose workday does not end at 4:00 p.m. A supervising employee, who participates in the AWP, submits that it is “an attractive benefit when courting new employees.” Moreover, employees note that in 2006, there was a proposal to terminate the AWP. However, based on the benefits of the AWP, as described above, the AWP was continued. Further, the employees argue that LPS’ declaration of a “prerogative” to terminate the AWP should not be accepted without verifiable substantiation.

The employees also emphasize that discontinuing the AWP would be a detriment to the environment. Increased air pollution will result from daily commutation and roads will become even more congested. The employees note that many of them drive a long distance to work. Moreover, the employees indicate that the AWP is a benefit to LPS in that there is a known work schedule, so that supervisors may better manage resources. The AWP schedules can also be used as a tool to schedule tests and operations of

specific equipment around an individual's day off. In addition, the AWP allows less use of personal leave time and may minimize personnel issues among co-workers by coordinating AWP schedules. Lastly, the employees maintain that continuing the AWP will boost morale and allow employees with children an extra day to bond with their children. Therefore, the employees urge the Commission to reconsider the approval to terminate LPS' AWP.

In response, LPS maintains that the needs of its employees were in fact considered. However, it states that due to the loss of staff in every area of the department and the current budgetary situation which limits its ability to hire new employees, termination of the AWP is necessary. LPS submits that it must be able to have its employees available on a regular work schedule to maintain the continuity of operations. It reiterates that continuing the AWP would negatively impact its ability to serve the public in a timely and efficient manner. Moreover, LPS indicates that it has delayed advising its employees of the firm date of the AWP termination so as to allow CWA officials the opportunity to express their concerns with the anticipated termination. In this regard, it notes that on April 11, 2011, it had a meeting with CWA officials, but no further information about that meeting has been provided. However, LPS requests that it be permitted to terminate its AWP, effective May 6, 2011, in order to allow employees additional time to adjust their schedules.

It is noted that CWA Local 1033 requested that consideration of this matter by the Commission be held over until it had an opportunity to further discuss the termination of the AWP with LPS and submit a "comprehensive response." In support of its request, it submits that it was never copied on LPS' request to this agency to terminate the AWP nor on the March 10, 2011 letter from the Assistant Director, Classification and Compensation, approving the termination. Furthermore, CWA Local 1033 asserts that CWA Local 1038, which represents employees in the southern region of the State, was not made aware of the appeals of its members. It notes that many employees were hired with the AWP being a term and condition of their employment. Thus, CWA Local 1033 asserts that to make a determination without the benefit of a "comprehensive response" by both the unions and LPS "would further complicate this matter, violate the [New Jersey] Employer-Employee Relations Act and would be contrary to the [tenets] of the Civil Service Act."

No further response has been received from CWA Local 1037.

CONCLUSION

Initially, CWA Local 1033 requests that consideration of this matter be held. However, the Commission has concluded its review of this matter and sufficient information has been provided to make a determination. Moreover, it is noted that there is no regulatory provision which requires an appointing authority or this agency to copy the unions on correspondence relating to AWP nor is there a regulation which mandates union consultation. *N.J.A.C. 4A:6-2.6(i)* only provides that appointing authorities **should** consult with affected negotiations representatives concerning alternative workweek programs before implementation. Furthermore, the appointing authority did not identify CWA Local 1038 as a representative of affected employees nor did that union file an appeal with regard to LPS' request for termination of the AWP, which employees were well aware of through an e-mail communication from LPS. Lastly, the Commission does not have jurisdiction over alleged violations of the New Jersey Employer-Employee Relations Act. *See N.J.S.A. 34:13A-1, et seq.*

With regard to the merits of this case, *N.J.A.C. 4A:6-2.7* provides in relevant part that:

(a) Appointing authorities may establish alternative workweek programs, such as a four day workweek, to accommodate operational and/or employee needs.

* * *

(g) Establishment, modification or termination of an alternative workweek program shall not become effective without the approval of [this agency]. Requests for these actions must be submitted at least 30 days in advance of the proposed effective date to [this agency] and shall include the same items listed in *N.J.A.C. 4A:6-2.6(d)*.

Moreover, *N.J.A.C. 4A:6-2.6(d)1* provides that the following be included in requests for establishment, modification or termination of an AWP: "[j]ustification which relates the requested action to operational and employee needs."

Upon a thorough review of the regulatory criteria and the submissions of the parties in this matter, the Commission does not find a sufficient basis to reverse the approval of the termination of LPS' AWP. Employees present the benefits of an AWP and how termination of the AWP will adversely affect their personal lives and the environment. However, while the Commission understands the benefits of an AWP, there is no statute or regulation which

mandates the program's existence. On the contrary, *N.J.A.C. 4A:6-2.6(a)* provides that appointing authorities **may** establish AWP. Thus, appointing authorities have the **discretion** to establish an AWP. The discretion to terminate an AWP also rests with the appointing authority provided that sufficient justification is presented. In this case, LPS submits that in light of "the current budgetary situation and the resulting impact on hiring," an AWP is no longer viable. LPS also maintains that although it considered the needs of its employees, the AWP must be discontinued so as not to undermine its ability to serve the public in a timely and efficient manner. Regardless of the reasons for establishing an AWP, LPS' current concern involves staffing. Indeed, eliminating the program will provide optimum staffing levels during a pay period. The Commission stresses that the appointing authority is in the best position to ascertain the needs of its customers. Substantial deference must be given to the appointing authority in considering termination or modification of an AWP. Therefore, the Commission is satisfied that LPS has presented a sufficient justification.

In addition, although LPS' AWP has been in existence for many years, it must be reiterated that AWP are discretionary. Termination of an AWP does not take away an employee's entitlement. *See In the Matter of the Alternative Workweek Program, Department of Environmental Protection* (CSC, decided April 6, 2011). The Commission notes that State workers are afforded generous leave time and may request leaves of absence without pay to attend to personal issues or participate in other programs offered by LPS, such as the Voluntary Furlough Program. *See N.J.A.C. 4A:6-1.1 et seq.* and *N.J.A.C. 4A:6-1.23*. Therefore, the Commission upholds the approval to terminate LPS' AWP.

With regard to the date of termination, LPS requests a May 6, 2011 effective date. *N.J.A.C. 4A:6-2.7(g)*, in conjunction with *N.J.A.C. 4A:6-2.6(d)7*, provides that a request for termination of an AWP shall include "[p]rovisions for giving employees at least two weeks' notice of termination of the program." The employees were already notified by e-mail on February 25, 2011 of LPS' intention to terminate its AWP on April 22, 2011. CWA Local 1033 and Local 1037 were also notified at that time. It is noted that CWA representatives were informed of the May 6, 2011 effective date in LPS' response to the employees' appeals. Setting the effective date on May 6, 2011 provides the employees with an additional two weeks' notice to adjust their personal commitments accordingly. Thus, the May 6, 2011 effective date is appropriate. Therefore, the Commission upholds the approval to terminate LPS' AWP effective May 6, 2011. LPS is directed to immediately advise its employees of the termination of the AWP, effective May 6, 2011, upon issuance of this decision.

ORDER

Therefore, it is ordered that these appeals be denied. It is further ordered that LPS immediately advise its employees of the termination of the AWP, effective May 6, 2011, upon issuance of this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.